

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

CERTAIN UNDERWRITERS AT
LLOYD'S AND THOSE COMPANIES
SEVERALLY SUBSCRIBING TO
BOEING POLICY NUMBER
MARCW150053 AND RELATED
POLICIES GOVERNING THE CARGO,
AND THE BOEING COMPANY,

Plaintiffs,

vs.

SOUTHERN PRIDE TRUCKING, INC.,
THUNDER ROLLS EXPRESS, INC.,
BAUER BUILT, INC., AND ROAD
STAR CARRIER, INC.,

Defendants.

8:16CV116

ORDER

After reviewing the parties' settlement conference statements, the court identified the following issues of law, or mixed issues of law and fact, that are in dispute and hindering the parties' ability to evaluate this case:

- Is a violation of 49 C.F.R. § 390 *et seq.* evidence of negligence or negligence *per se*?
- Are the federal regulations in 49 C.F.R. § 390 *et seq.* relevant in assessing the conduct of Defendant Bauer Built; that is, at the time the accident occurred, was Bauer Built operating a commercial vehicle subject to those federal regulations?
- Do the undisputed facts of record establish, as a matter of law, that the conduct of Thunder Roll's driver was the sole proximate cause of the accident?
- Assuming the conduct of Road Star and/or Bauer Built was a proximate cause of the accident, can these common law tort defendants be held jointly and severally liable with the Carmack defendants, Southern Pride and Thunder Rolls, for all damages incurred? Or will the extent of Road Star and/or Bauer Built's liability be apportioned commensurate with the degree to which they caused the accident and resulting damages?

- If Road Star and Bauer Built are jointly and severally liable with Southern Pride and Thunder Rolls for all damages arising from the accident, does the Carmack Amendment prohibit Road Star and Bauer Built from asserting indemnity and contribution claims against Southern Pride and Thunder Rolls?
- Could Plaintiff recover punitive damages against any of the defendants, even assuming the evidence supports such a claim?

The rulings on these issues, and perhaps others not currently identified by the undersigned magistrate judge, will assist the parties' efforts toward settlement.

Accordingly, to "secure the just, speedy, and inexpensive determination" of this case, (Fed.R.Civ.P. 1),

IT IS ORDERED:

1) All case progression deadlines (including any response to discovery or efforts toward resolving any disputed discovery issues) are stayed, and the trial and pretrial conference settings are stricken.

2) Defendants Southern Pride Trucking, Inc. and Thunder Rolls Express, Inc. shall file any supplemental or renewed motions for summary judgment by January 6, 2017.

3) Except as to Defendants Southern Pride Trucking, Inc. and Thunder Rolls Express, Inc., on or before January 27, 2017, the parties shall file their respective:

- a. responses to the motion for summary judgment filed by Defendants Southern Pride Trucking, Inc. and Thunder Rolls Express, Inc.; and
- b. additional summary judgment motions directed at resolving the liability issues that are currently impeding active and informed settlement discussions.

- 4) On or before February 17, 2017,
 - a. Defendants Southern Pride Trucking, Inc. and Thunder Rolls Express, Inc. shall file any reply to their summary judgment motion, and
 - b. All parties shall file their response to the motions for summary judgment due to be filed by January 27, 2017 under the terms of this order.
- 5) Except as to Defendants Southern Pride Trucking, Inc. and Thunder Rolls Express, Inc., on or before February 24, 2017, the parties shall file any reply to their respective summary judgment motions.
- 6) The parties' motions for summary judgment shall be deemed submitted as of February 27, 2017.

The parties are hereby notified that any requests for continuances of the deadlines in this order will be denied absent a substantial showing of good cause.

December 14, 2016.

BY THE COURT:

s/ Cheryl R. Zwart
United States Magistrate Judge